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May 29, 1996

DEPT. OF TRANSPORTATION
DOCKET SECTION

96 MAY 29 PM 4:50

Myrna F. Adams, Chief
Docket Branch
Department of Transportation
400 7th Street, S.W.
Room PL-401
Washington, D.C. 20590

Re: American/Canadian Antitrust Immunity, OST-95-792 -27

Dear Ms. Adams:

American Airlines, Inc. and Canadian Airlines
International Ltd., in accordance with paragraph 5 of Order 96-
5-38, May 29, 1996 (p. 25), hereby file a signed and dated copy
of their Agreement.

Respectfully submitted,

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/ab

Enclosure

cc: Service list

COMMERCIAL ALLIANCE AGREEMENT

This Agreement dated November 2, 1995, is made by and **between** American Airlines, Inc. ("American") and Canadian Airlines International Ltd., ("Canadian"). American is a Delaware corporation with its principal office at 4333 **Amon** Caner Boulevard, Fort Worth, Texas 76155. Canadian is an **Alberta** corporation with its principal office at **700** Second Street, **S.W.**, Suite 2800. Calgary, Alberta **T2P 2W2**, Canada.

RECITALS

Whereas AMR Corporation ("AMR", the parent to American) and Canadian have previously entered into a **Services** Agreement dated April 27, 1994 under which various divisions of **AMR** provide the following **services to** Canadian, and under the managerial control of Canadian: pricing and yield management, operations planning, **international** base operations, food and beverage support, reservations, ground operations, capacity planning, technical (including data processing) and accounting services. American and Canadian (collectively **the "Parties"**) have **entered** into a Canadian Plus participating Agreement dated December 29, 1992, and an **AAdvantage** participating **Carrier** Agreement dated December 29, 1992 in order to **expand** their **respective** frequent **flyer** programs. In order to offer improved customer **service and enhance international competition the Parties have also entered into an** agreement **pertaining to** reciprocal **codesharing**, which **codesharing** was approved by the National Transportation Agency of Canada on April 28, 1995, and by the United **States** Department of Transportation on May **18**, 1995 and which resulted in the **commencement** of **codesharing flights** by the **Parties** on June 19, 1995 (the "Cooperative Service Agreement").

Whereas the Parties desire to strengthen their airline alliance through **the** implementation of **specific** cooperative programs which will generate **efficiencies** for each carrier. allow each carrier to **serve** routes **that would not be** feasible without this Agreement, and thereby **strengthen** each **carrier** as an **independent** competitor in **the** global air transportation **marketplace**.

Whereas the cooperative programs **contemplated hereunder** will **create greater** international competition by **developing** new service products and **expanding the scope of operations through the efficiencies and synergies** created by the optimized use of certain resources of the **Parties**.

Whereas each such **cooperative** program shall **be** implemented pursuant to a specific agreement to be negotiated between the **Parties**, which agreement shall set out the terms and conditions to apply to such cooperative program.

Whereas the **governments of Canada** and **the United States** of America have recently **entered** into an Air Transport Agreement **dated February 24, 1995** which, among other things, notes **the desire** of both countries to **promote transborder** commercial air

services to the fullest **possible** extent and as well their desire to make it possible for individual airlines to offer the **travelling** and shipping public a variety of service options at the lowest prices.

Whereas the Air Transport Agreement **specifically** contemplates that an airline of one country may enter into cooperative **arrangements** with an airline of **the** other **country**, subject to compliance with applicable laws and regulations.

Whereas the Parties intend that the implemenmtion and operation **of** each **cooperative** program contemplated **hereunder** shall **be** in full conformity with the laws and regulatory requirements to which each carrier is subject, including without limitation those pertaining to national ownership and control.

Now therefore, in consideration of the premises and the mutual covenants and **agreements contain** herein, the Parties agree. subject to all necessary approvals from the **requisite** government authorities, to enter into this Agreement under the terms and **conditions set forth herein.**

Article 1: Scope of the Agreement

1.1 **Scope**

American and Canadian **hereby** each agree to enhance their commercial cooperation pursuant to the principles set forth herein, which will be implemented to achieve a high level of cooperation **between** the carriers' sales and marketing activities emphasizing their combined route networks, generate efficiencies for each carrier, and make each **carrier** a stronger independent competitor in the **global** air transportation marketplace.

1.2 **Objective**

The objective of this Agreement is to establish **a legal framework** under which American and Canadian may facilitate **the** expansion and enhancement of the current cooperative **marketing efforts between American** and Canadian as set **forth** in the Cooperative Service Agreement. **Accordingly, this Agreement will:**

- 1.2.1 he **taken** into account on matters concerning the interpretation, administration and exploitation of the Cooperative Service Agreement, and
- 1.2.2 set **forth** the principles governing the development of additional agreements, including agreements to further define and implement the Passenger Program and **the** Cargo Program, as defined in Article 2 hereof.

Article 2: Cooperation in **Passenger** and Cargo Programs

2.1 Cooperative Marketing Programs

American and Canadian **hereby** agree, as **part** of their cooperation on commercial operations, to market **both** carriers' air **transportation** of passengers through **cooperative**, joint marketing operations and programs (the "Passenger **Program**"). The Passenger Program will include those joint sales and marketing elements **set** forth in Section 2.2.

2.2 Passenger Program

Upon execution of this Agreement, American and Canadian will proceed to negotiate one or more agreements for a comprehensive global marketing and **sales** program of air transportation on American and Canadian. The Passenger Program may include the following:

2.2.1 General Policies

Policies, **procedures**, information systems, and **programs that** will facilitate the Passenger Program.

2.2.2 Service Standards

The creation of mechanisms to promulgate, **administer** and enforce the levels **of** quality and **service standards** and **to ensure that** the cooperative service products are **viewed** as seamless and **transparent** to the customers. In this regard, passengers booked **and ticketed** on the cooperative services of the **Parties** will receive the same service **and** amenities,. both **on** the ground and in-flight, as each of **the Party's** own **online** passengers.

2.2.3 Operational Committees

The **establishment** of **one** or more operational committees to oversee joint project development, budgets, directions and other cooperative activities hereunder.

2.2.4 Service Contracts

The use of service contracts **between** the **Parties** and **standard** service **contracts with** third parties to avoid **redundancy** and to ensure that the delivery of services is **consistent** with the joint products and joint identities of the Parties.

2.2.5 Schedule Coordination

The coordination of schedules, **third party** marketing, network planning, and information systems to maximize sales possibilities by **connecting** services between the American and Canadian **systems**.

2.2.6 New Markets

The entry of either carrier into new **markets**, as regulatory requirements permit, in order to expand the combined presence of American and Canadian throughout transportation markets worldwide.

2.2.7 Passenger Pricing and Inventory Strategy

The pricing strategy and the fares to be charged and inventory management, including systems, by each air carrier **with** respect to **all Passenger** Program products, including wholesale net fares, **corporate** discount programs, and airline prorates.

2.2.8 Sales Personnel

A combination of American and Canadian sales personnel, including a common staff, who would be **authorized** to represent both **American** and Canadian, independently and jointly, in marketing their products to **customers** and **travel agents** for sales of the services offered by both carriers. The joint **marketing** program may **be** structured as a joint venture of American and Canadian selling a seamless, online-quality **joint** product or set of products.

2.2.9 Commission Coordination

The establishment of a **unified** commission program, including agency, group, **corporate** and override commissions programs to be agreed upon from time to time by the **Parties** throughout **the** term hereof.

2.2.10 Travel Agent Contracts .

The developmem and use of standard form **contracts** for sales to **travel** agencies, general sales agents, corporations, organizations and individuals.

2.2.11 Advertising and Media Programs

The ● srablisbment of advertising and media programs that jointly **promote** American and Canadian as a seamless, worldwide transportation system, consistent with applicable regulations concerning the advertising of **codeshare** services.

2.2.12 Ancillary Programs

The establishment of ancillary programs, including, without limitation, travel packages, coordination of facilities, information systems, or mail service to enhance the products marketed by the Parties.

2.2.13 Frequent Flyer Program Coordination

The coordination of frequent flyer and similar programs, including elements thereof pertaining to mileage accrual and redemption **rates**, frequent flyer upgrades, and promotional programs.

2.2.14 Revenue Allocation

The establishment of agreements and procedures for the allocation of revenues on specific routes.

2.2.15 Partner Incentives

The establishment of incentives to ensure that each carrier is fully committed to the success of the **cooperative** service products.

2.2.16 Marketing and Accounting Information

The joint **use** of marketing and accounting data, and information systems available to the Parties, consistent with and subject to all applicable laws and agreements governing each **Party**.

2.2.17 Joint Identity

The development of a joint identity for their **codeshare** product(s) through jointly developed service logos, **symbols** or names, that would maintain the identity marks of the individual **carriers** consistent with the requirements of 14 CFR 399.82, and which will describe or identify the services, products, or programs of either or both carriers, whether or not previously registered as trademarks in the **United** States, Canada, or any other **country**.

2.2.18 Resolution of Dispute

The assignment of specific personnel from both carriers, at various levels, with authority to resolve disputes or waive conditions.

2.3 cargo Program

In addition to the Passenger **Program**, the cooperative marketing operations of the Parties shall include joint cargo sales and marketing (the "Cargo Program"). The terms

of the Cargo Program will include those elements on which the Parties mutually agree including, without limitation, elements equivalent to those set forth in Section 2.2 hereof and the marketing of both **carriers'** air transportation of cargo through cooperative, joint marketing and operations programs.

2.4 Fully Integrated Marketing Force

The **Parties** shall expand **the** Passenger Program and the Cargo Program so as to ultimately provide a **fully** integrated marketing force throughout the world to aggressively sell and market the products and services of American and Canadian both independently and jointly. Any expansion of these programs **shall** be subject to mutual written consent of American and Canadian.

2.5 Prior Consent of the Parties Required

All aspects of commercial cooperation hereunder shall be subject to the prior review and written **approval** of both American and Canadian. Each **Party shall** at all times retain and exercise its own managerial control and decision making authority in regards to any decision by it to engage in any aspect of the commercial cooperation **referred** to hereunder.

Article 3: Government and Regulatory Approvals

3.1 Government Compliance

In **carrying** out this agreement, the parties **will** comply with all necessary government laws, regulations, and requirements, including but not limited to the applicable competition laws.

3.2 Government Approvals

The **Parties shall take** all necessary steps, in cooperation with each other, to obtain all approvals, if any, from government authorities **in** the **United** States and Canada. or any other appropriate governmental **authority**, in order to **carry** out the terms of this Agreement.

3.3 Governmental Limitations

In the event that any governmental agency or regulatory **body** having jurisdiction over the subject matter hereof shall require any material condition or limitation to this Agreement, the Parties hereto shall negotiate in good faith to make such amendments to this Agreement as **shall** be necessary to achieve the **purposes** and objectives of this Agreement. If **any** such condition or limitation, in the reasonable judgment of either **Party**, is **fundamental** to the intent of such Party and the operation of this Agreement, the Party shall have the right to declare that this **Agreement** shall not **•** enter into effect or to terminate this Agreement upon written notice.

3.4 Governmental Regulations

In the event that any necessary governmental approval is withdrawn or any governmental order issued or there is any change in applicable statutes, laws, or regulations **government** the operations contemplated by this Agreement which would materially affect the rights, benefits, and/or obligations of the **Parties** hereto, the Parties shall, within ninety (90) days thereafter, comply **therewith** by mutual agreement. **and** shall not be liable to each other for **failure to fulfil any obligations under this** Agreement **that** may be consistent with such changes, orders, statutes, laws, or **regulations** or this Agreement shall be deemed to be terminated. The Parties shall negotiate in good faith to **make** amendments to this Agreement as may be necessary and **sufficient** to comply with governmental regulations, and to achieve the purposes and objectives of **this** Agreement.

Article 4: Execution and **Termination**

4.1 Duration of Agreement

This Agreement **shall** be effective **for an initial term of one** (1) year, and remain **in effect** thereafter until terminated by either **Party** upon not less than one-hundred and eighty (180) days prior **written** notice to **the** other Party. The Parties agree that this Agreement **may be executed in counterparts, including facsimile transmission copies, that** each executed copy shall be deemed to be an original. and that **all originals** together shall **constitute** one instrument.

4.2 Termination for Cause

Notwithstanding the provision of **Article** 4, paragraph **1**, either **Party** may terminate this Agreement at any time if the other **Party defaults** in observing or performing **any** of the provisions of this Agreement, becomes insolvent, makes a general assignment for the benefit of creditors, or commits an act of bankruptcy, or if a petition in bankruptcy for its **reorganization** or the readjustments of its indebtedness be filed by or against it, or if a receiver, **trustee**, or liquidator of all or substantially all of its **property** be appointed or applied for if it ceases to be **in** business as an air carrier.

4.3 Obligations

Each **Party** agrees to **fulfil all** obligations which **accrued** hereunder prior to **the termination** becoming effective.

4.4 Notification

Notice of **termination shall** be **addressed** to the principal office of either **Party**, mentioned in the preamble of this Agreement, to the attention of the Corporate Secretary.

Article 5: Claims and Indemnification

5.1 Terms

American and Canadian shall each defend, indemnify, and hold harmless the other Party, its officers, directors, **affiliates**, employees, agents, and contractors from and against any and all claims, causes **of** action, lawsuits and damages of any kind whatsoever (including reasonable attorneys fees, and cost of litigation) arising from or in connection with each Party's responsibilities, obligations, and performance under this Agreement or the acts or omissions of either **Party**, its officers, employees or agents which are in any **way** related to **services** contemplated by this Agreement.

5.2 Wilful Misconduct

Notwithstanding the provisions of Article 5, **paragraph 1**, a **Party** hereto shall not be obliged to indemnify and save free and harmless the other **Party** to the extent that it can prove that the claims, causes of action, lawsuits or damages resulted **from** the wilful misconduct of the other **Party**.

5.3 Notification

In the event that any claim is made or any suit is commenced against the **Party** entitled to be **indemnified in** accordance with this Article 5, such **Party** shall give prompt written notice to the other **Party**, whereupon the latter **Party** shall undertake, at its own cost and expense, the defense of such suit or settlement of such claims and pay the amount of any final judgment or **decree** or of any settlement negotiated by the indemnifying **Party** and all expenses incident thereto. The **Party to be** indemnified shall cooperate by furnishing promptly to the other **Party** at its request all pertinent data, papers, records, and information which it has at its disposal.

Article 6: **Force Majeure**

6 . Terms

Except for **any** payments due hereunder, either Party shall be relieved of its obligations hereunder in the event and to the **extent** that performance thereof is delayed or prevented by any cause reasonably beyond its **control**, including, but not limited to, acts of God, public enemies, **war**, civil disorder, **fire**, flood, inclement weather, explosion, **labour** disputes or **strikes** (including those by its own employees), or any acts or **orders** of any governmental **authority, including the United States, Canada, countries of** codeshared points, and any third **country**. Notwithstanding the foregoing provision, during the **course** of the non-performing **Party's** failure to perform, the other **Party** may elect to take, after given seven (7) days' advance written notice to the non-performing **Party**, one or more of the following **actions**:

6.1.1. Temporary Suspension of Agreement

The performing **Party** may suspend the operation of this Agreement and such other Party's covenants and obligations hereunder;

6.1.2 Terminate Agreement

The performing Party may terminate this **Agreement** if the non-performing **Party's** non-performance has continued for a period of **thirty** (30) days or more; or

6.1.3. Continue Agreement

The **performing Party** may continue to perform the terms **of** this Agreement, or **portions** thereof, under such further terms and conditions as the Parties are able to reach through written agreement.

Article 7: Applicable Law and Arbitration

7.1 Applicable Law and Arbitration

This Agreement **shall** be governed by and interpreted pursuant to the substantive laws of the State of New York. All disputes arising **in** connection with this Agreement shall be resolved pursuant to the procedures set forth in Section 7, Mediation and **Arbitration**, of the Services Agreement.

Article 8: Headings

8.1 Convenience Purposes

The headings **contained** in this Agreement are inserted as a **matter** of convenience only and are not intended in any way **to** define, limit, or be **used** in connection with the interpretation of this Agreement.

Article 9: Assignment

9.1 Terms

Neither **Party may** assign any rights or obligations under this Agreement without the prior written consent of the other **Party**. Any attempted assignment, without such prior consent of the other **Party**, shall be null and void and of no effect.

Article 10: Severability

10.1 Non-material Provision

If any non-material provision contained **in** this Agreement shall be held to be invalid or unenforceable in any respect in any jurisdiction, such invalidity or unenforceability shall not **affect** the other provisions hereof which can be given effect without the invalid **provision**, and to this end the provisions of this Agreement are intended to be and shall be deemed severable.

10.2 Revised Provision

The Parties agree to use their best efforts to **replace** such **invalid** or unenforceable provision with a valid and enforceable provision having to the maximum extent possible the same economic or practical effect.

10.3 Material Provision

If in the reasonable judgement of either **Party**, any provision or provisions held to be invalid and unenforceable is or are fundamental to the intent of such **Party** and the operation of this **Agreement**, such **Party** shall **have** the right to terminate this Agreement upon not less than a ninety (90) day prior written notice to **the** other **Party**.

Article 11: Non-Waiver

11.1 Terms

No waiver of any provisions hereof shall be effective unless in writing and signed by both American and Canadian. Any single **waiver** shall not operate to **waive** subsequent or other defaults.

Article 12: Modification

12.1 Terms

Any additions to or modifications of this Agreement shall **have** to be **agreed** upon in writing by both Parties; provided, however, that any **modifications** or additions which become necessary by **reason** of **IATA** resolutions binding upon either or both of the **Parties** to this Agreement shall be deemed to be incorporated herein as from the effective date of such resolution.

Article 13: Filing Fees

13.1 Responsible Party

All filing fees in connection with this Agreement which may be prescribed under the national law of either Party to this Agreement, are payable by that Party.


Article 14: Construction of Agreement

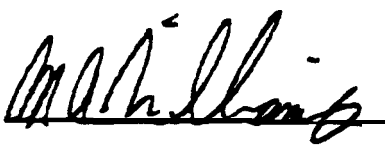
14.1 Interpretation of Terms

It is intended that the terms of this Agreement be interpreted and the cooperation related to products and services described herein be undertaken in a manner that would not would not cause the Parties to be treated for any purpose as participating in a partnership or joint venture.

Understood, and agreed

Canadian Airlines International Ltd.

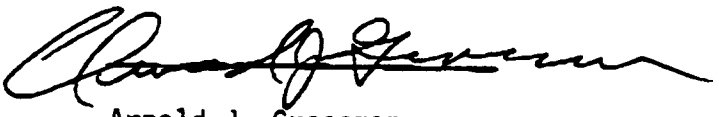
By: 
Name: DON CASEY
Vice-President
Title: Capacity Planning
Date: November 2, 1995

By: 
Name: Mark A. Williams
Vice-President & Controller
Title: _____
Date: November 2, 1995

Tor-Red 112930.05

Understood, and agreed.

American Airlines, Inc.

By: 
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m e : Vice President International Affairs
Date: November 2, 1995

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